

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7**

**NWS MICHIGAN, LLC, d/b/a REPUBLIC
NATIONAL DISTRIBUTING COMPANY
MICHIGAN (RNDC)¹**

Employer

and

Case 07-RC-237982

**LOCAL 299, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS (IBT)**

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner seeks to represent a unit of all full-time and regular part-time driver helpers employed by the Employer at its facility located at 17550 Allen Road, Brownstown, Michigan. The unit sought by the Petitioner consists of 19 employees. Petitioner seeks a self-determination election under the Board's *Armour-Globe*² doctrine to determine whether these employees wish to be included in the existing the bargaining unit of drivers and switcher/utility employees. The Employer maintains that the unit sought by Petitioner is not appropriate because the petitioned-for unit of driver helpers does not share a community of interest with the existing unit of drivers and switcher/utility employees.

A hearing officer of the Board held a hearing in this matter and the parties orally argued their respective positions prior to the close of the hearing. As explained below, based on the record and relevant Board law, I find that the petitioned-for unit of driver helpers shares a community of interest with the existing unit of drivers and switcher/utility employees currently represented by Petitioner and constitutes an appropriate voting group for purposes of a self-determination election. Accordingly, I shall order a self-determination election in the petitioned-for unit.

THE EMPLOYER'S OPERATION

The Employer, located in Brownstown, Michigan, is a distributor of alcoholic beverages. The Petitioner has represented the drivers and switcher/utility employees since 1997. The Employer and the Petitioner have a collective bargaining agreement that is in effect from April 23, 2016, through April 23, 2019, which covers all full-time drivers and switcher/utility employees employed by the Employer based in and servicing customers from the Southeast Michigan area. This unit is the pre-existing unit for which the Petitioner seeks a self-determination election for the 19 driver helpers. The driver helpers have never been represented by a labor organization.

¹ The Employer's name appears as amended at hearing.

² *Armour & Co.*, 40 NLRB 1333 (1942), and *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

Andrew Mendelsohn, operations manager, oversees the entire operation at the Brownstown facility. About 450 employees work at the Brownstown facility, the majority of which are sales employees. The distribution manager reports to Mendelsohn, and the transportation manager reports to the distribution manager. The transportation division is composed of the transportation manager, four transportation supervisors, and 98 drivers and switcher/utility employees,³ and 19 driver helpers, who report to the transportation supervisors. The transportation division is responsible for delivering the product by driving delivery trucks to vendors along a pre-set route. Terry Young, Jake P.,⁴ Chris Tocco, and another new supervisor whose name is not reflected in the record, supervise the drivers and the driver helpers.⁵ Although Jake P. usually assigns the driver helpers to work with the drivers, all the transportation supervisors can direct the drivers and the driver helpers.

The majority of drivers perform their respective routes without a driver helper. Drivers' routes are assigned through a bidding process. Drivers and driver helpers both clock in using the same system. Each morning, a transportation supervisor makes a reasonable attempt to assign a driver helper to each driver who is required to deliver 400 cases of product or is working in a crime-ridden area. If the driver chooses not to accept a helper or if none are available, the Employer pays the driver an extra \$100 per shift, pursuant to the collective bargaining agreement. When a driver is assigned a driver helper, drivers and driver helpers spend the entire workday together delivering the product. Drivers are generally held responsible for ensuring that all of the product is delivered and must account for any deficiencies. Drivers perform pre-trip and post-trip inspections of the truck. They collect payment from the customers and are held responsible for any accidents. They must log their hours due to regulation by the Department of Transportation.

Switcher/utility employees are drivers who move the trucks during the night so that they are loaded for deliveries the next morning. In addition to these duties, they can also make deliveries. They receive a shift premium of 50 cents per hour because they work at night.

Drivers are required to have a Class B Commercial Driver's License (CDL), although some have a Class A CDL. Driver helpers are not required to have a CDL. During Christmas 2018, some driver helpers as well as salesmen and merchandisers delivered a small amount of product in trucks that can be driven legally without a CDL.

Drivers and switcher/utility employees are paid weekly. Drivers earn \$24.44⁶ per hour and switcher/utility employees earn \$22.41 per hour. The Employer provides drivers and switcher/utility employees hired before 2016, with a pension plan. The Employer provides drivers and switcher/utility employees hired since that time with a 401(k) retirement plan.

³ The record does not reflect the specific number of drivers or the specific number of switcher/utility employees – only that there are 98 employees in total employed in the pre-existing unit.

⁴ The record does not reflect Jake P.'s last name.

⁵ The record does not reflect who supervises the switcher/utility employees.

⁶ New hires are paid 80% of these rates.

Drivers and switcher/utility employees have a separate healthcare plan from other employees at the Employer. Drivers and switcher/utility employees are subject to drug testing, as required by the Department of Transportation. The Employer provides drivers with polo shirts with the driver's name on them.

Driver helpers earn \$14.61 per hour and are paid biweekly. They are eligible to participate in a 401(k) retirement plan. They are not subject to drug testing. The Employer provides driver helpers with green vests.

BOARD LAW

An *Armour-Globe* self-determination election permits employees sharing a community of interest with an already represented unit of employees to vote whether to join that unit. *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937); *Armour & Co.*, 40 NLRB 1333 (1942). The Board has held that a self-determination election is the proper method by which an incumbent union may add unrepresented employees to its existing unit if the employees sought to be included share a community of interest with unit employees and constitute an identifiable, distinct segment so as to constitute an appropriate voting group. *St. Vincent Charity Medical Center*, 357 NLRB 854 (2011); *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990), citing *Capital Cities Broadcasting Corp.*, 194 NLRB 1063 (1972).

When determining an appropriate unit, the Board delineates the grouping of employees within which freedom of choice may be given collective expression. At the same time, it creates the context within which the process of collective bargaining must function. Therefore, each unit determination must foster efficient and stable collective bargaining. *Gustave Fischer, Inc.*, 256 NLRB 1069 (1981). The Board has also made clear that the unit sought for collective bargaining need only be an appropriate unit. Thus, the unit sought need not be the ultimate, or the only, or even the most appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723, at 723 (1996). As a result, in deciding the appropriate unit, the Board first considers whether the unit sought in a petition is appropriate. *Id.* When deciding whether the unit sought in a petition is appropriate, the Board focuses on whether the employees share a "community of interest." *NLRB v. Action Automotive*, 469 U.S. 490, 494 (1985). In turn, when deciding whether a group of employees shares a community of interest, the Board considers whether the employees sought are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *United Operations, Inc.*, 338 NLRB 123 (2002). Particularly important in considering whether the unit sought is appropriate are the organization of the plant and the utilization of skills. *Gustave Fischer, Inc.*, *supra* at fn. 5. With regard to organization of the plant, the Board has made clear that it will not approve of fractured units – that is, combinations of employees that are too narrow in scope or that have no rational

basis. *Seaboard Marine*, 327 NLRB 556 (1999). However, *all* relevant factors must be weighed in determining community of interest.

APPLICATION OF BOARD LAW TO THE FACTS OF THIS CASE

Organization of the Plant

An important consideration in any unit determination is whether the proposed unit conforms to an administrative function or grouping of an employer's operation. Thus, for example, generally the Board would not approve a unit consisting of some, but not all, of an employer's production and maintenance employees. See, *Check Printers, Inc.* 205 NLRB 33 (1973). However, in certain circumstances the Board will approve a unit in spite of the fact that other employees in the same administrative grouping are excluded. *Home Depot USA, Inc.*, 331 NLRB 1289, 1289 and 1291 (2000). In this case, the unit sought by Petitioner conforms to an administrative grouping of the Employer. Specifically, the drivers and the driver helpers work to deliver the Employer's product. They are supported in this task by the switcher/utility employees who prepare the trucks for delivery overnight. These employees work in the transportation division and report to the transportation supervisors.

Interchangeability and Contact among Employees

Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange "may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills." *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. *Executive Resources Associates*, 301 NLRB 400, 401 (1991), citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1981). In this case, while the drivers and the driver helpers work together to unload the trucks, the record revealed that no driver helpers have become drivers. Similarly, drivers do not work as driver helpers. Moreover, the majority of the drivers work alone. The drivers perform all of the actual driving and are accountable for the delivery of the product.

Also relevant is the amount of work-related contact among employees, including whether they work beside one another. Thus, it is important to compare the amount of contact employees in the unit sought by a union have with one another. See, for example, *Casino Aztar*, 349 NLRB 603, 605-606 (2007). There is evidence of substantial work-related contact between the drivers and driver helpers because they spend the entire workday together when a helper is assigned to a driver. They ride together in the Employer's truck, have lunch and breaks together, and deliver the product along the route.

Common Supervision

Another community-of-interest factor is whether the employees in dispute are commonly supervised. In examining supervision, most important is the identity of employees' supervisors who have the authority to hire, to fire or to discipline employees (or effectively recommend those actions) or to supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work providing guidance on a day-to-day basis. *Executive Resources Associates, supra* at 402; *NCR Corporation*, 236 NLRB 215 (1978). Common supervision weighs in favor of placing the employees in dispute in one unit. However, the fact that two groups are commonly supervised does not mandate that they be included in the same unit, particularly where there is no evidence of interchange, contact or functional integration. *United Operations, supra* at 125. Similarly, the fact that two groups of employees are separately supervised weighs in favor of finding against their inclusion in the same unit. However, separate supervision does not mandate separate units. *Casino Aztar, supra* at 607, fn 11. Rather, more important is the degree of interchange, contact and functional integration. *Id.* at 607.

In this case, the record reveals that drivers and driver helpers share common supervision. Drivers and driver helpers report to the transportation supervisors. Each transportation supervisor has authority to direct drivers and driver helpers.

The Nature of Employee Skills and Functions

This factor examines whether disputed employees can be distinguished from one another on the basis of job functions, duties or skills. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one unit. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another's work, or that disputed employees work together as a crew, support a finding of similarity of functions. Evidence that disputed employees have similar requirements to obtain employment; that they have similar job descriptions or licensure requirements; that they participate in the same Employer training programs; and/or that they use similar equipment supports a finding of similarity of skills. *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penney Company, Inc.*, 328 NLRB 766 (1999); *Brand Precision Services*, 313 NLRB 657 (1994); *The Phoenician*, 308 NLRB 826 (1992). Where there is also evidence of similar terms and conditions of employment and some functional integration, evidence of similar skills and functions can lead to a conclusion that disputed employees must be in the same unit, in spite of lack of common supervision or evidence of interchange. *The Phoenician, supra*.

The record reveals that drivers and driver helpers generally possess the same job function of delivering product. They both lift and carry product directly in the stores and use dollies and pallet jacks to do so. The drivers also have other responsibilities. They each have a commercial driver's license that permits them to drive the Employer's trucks. Drivers also handle payment and are responsible for the delivery of product. As drivers, they are regulated by

the State of Michigan and the Department of Transportation. Drivers and driver helpers both unload the trucks together. A driver is always needed for every delivery, but a helper is only assigned for some. Thus, the driver can do the driver helper's job, but the helper cannot do the driver's job.

Degree of Functional Integration

Functional integration refers to when employees' work constitutes integral elements of an employer's production process or business. Thus, for example, functional integration exists when employees in a unit sought by a union work on different phases of the same product or as a group provides a service. Another example of functional integration is when the Employer's work flow involves all employees in a unit sought by a union. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. *Transerv Systems*, 311 NLRB 766 (1993). On the other hand, if functional integration does not result in contact among employees in the unit sought by a union, the existence of functional integration has less weight.

The record reveals that the drivers and the driver helpers are functionally integrated. The drivers and the driver helpers work as a team to ensure the delivery of product to the Employer's customers. The collective bargaining agreement covering the drivers specifically provides for the provision of a helper to any driver who has a route with 400 or more cases.

Terms and Conditions of Employment

Terms and conditions of employment include whether employees receive similar wage ranges and are paid in a similar fashion (for example, hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies and other terms of employment that might be described in an employee handbook. However, the facts that employees share common wage ranges and benefits or are subject to common work rules does not warrant a conclusion that a community of interest exists where employees are separately supervised, do not interchange and/or work in a physically separate area. *Bradley Steel, Inc.*, 342 NLRB 215 (2004); *Overnite Transportation Company*, 322 NLRB 347 (1996). Similarly, sharing a common personnel system for hiring, background checks and training, as well as the same package of benefits, does not warrant a conclusion that a community of interest exists where two classifications of employees have little else in common. *American Security Corporation*, 321 NLRB 1145 (1996).

In the instant case, the record reveals that the driver helpers, drivers, and switcher/utility employees share common terms and conditions of employment. These include a Monday through Friday work schedule and, for newer drivers and switcher/utility employees, a 401(k) retirement plan. On the other hand, the drivers and driver helpers have a number of different terms and conditions of employment. These include higher wages that are paid to drivers and

switcher/utility employees, different healthcare benefits, different attendance policies, and, for longer term employees, a pension plan. The drivers and switcher/utility employees are paid weekly, and the driver helpers are paid biweekly.

CONCLUSION

Based on all of the above, and in particular the functional integration, overlapping of duties, common supervision, and regular contact, I find that the driver helpers share a community of interest with the employees in the existing bargaining unit. *International Bedding Co.*, 356 NLRB 1336 (2011). Although there is a lack of interchange and certain differences in their compensation packages, these differences are outweighed by the other factors. I also find, consistent with the parties' stipulation, that the driver helpers constitute an identifiable, distinct segment of the Employer's work force so as to constitute an appropriate voting group.

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time driver helpers employed by the Employer at and out of its facility located at 17550 Allen Road, Brownstown, Michigan; but excluding all other employees currently employed by the Employer at its facility located at 17550 Allen Road, Brownstown, Michigan, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Local 299, International Brotherhood of Teamsters (IBT)** as part of the existing unit of drivers and switcher/utility employees employed by the Employer at its facility located at 17550 Allen Road, Brownstown, Michigan.

A. Election Details

The election will be held on Friday, May 3, 2019, from 4:45 a.m. to 6:00 a.m. in the Cognac Conference Room at the Employer's facility located at 17550 Allen Road, Brownstown, Michigan.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **April 13, 2019**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Friday, April 19, 2019**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

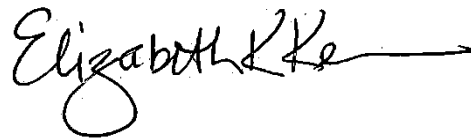
RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: April 17, 2019

A handwritten signature in black ink, appearing to read "Elizabeth Kerwin", with a long horizontal flourish extending to the right.

Elizabeth Kerwin, Acting Regional Director
National Labor Relations Board, Region 07
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, MI 48226

Attachment: Notices of Election